

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the WIC
Application of Minnesota
Valley Action Council, Inc.

FINDINGS OF FACT.
CONCLUSIONS AND
RECOMMENDATIONS

The above-captioned matter came on for hearing before Administrative Law Judge Richard C. Luis on August 27, 1993 at the Office of Administrative Hearings in Minneapolis. The record closed at the conclusion of the hearing on the same day.

Wendy Willson Legge, Assistant Attorney General, Suite 500, 525 Park Street, St. Paul, Minnesota 55103-2106, appeared on behalf of the Department of Health ("Department"). William T. FitzSimmons, Executive Director, and John Woodwick, Director of Family Services, Minnesota Valley Action Council, 410 Jackson Street, P.O. Box 3327, Mankato, Minnesota 56002-3327, appeared on behalf of the Appellant, Minnesota Valley Action Council, Inc. ("MVAC").

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mary Jo O'Brien, Commissioner of Health, 717 Delaware Street, Minneapolis, Minnesota 55440 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

Was it appropriate for the Department of Health to treat both Minnesota Valley Action Council, Inc. and Watonwan County Human Services as agencies that do not have poor performance records under Minn. Rule 4617.0020 in connection with disapproval of the application of Minnesota Valley Action Council, Inc. to act as the local WIC agency for Watonwan County?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Prior to introducing testimony at the hearing, the parties agreed to offer into the record Joint Exhibit 1, an executed Stipulation of Facts

between the Department of Health and Minnesota Valley Action Council, Inc. The parties thereby stipulated to the following facts:

1. The Department received applications from both MVAC and Watonwan County Human Services to administer the WIC Program in Watonwan County for the period October 1, 1993, through September 30, 1995.
2. The application of MVAC was submitted according to Minn. R. pt. 4617.0010 (1991), and the application of MVAC documented that MVAC meets the eligibility criteria for local agencies pursuant to Minn. R. pt. 4617.0015 (1991).
3. MVAC does not have a poor performance record, as that term is used in Minn. R. pt. 4617.0020 (1991). Watonwan County Human Services has no performance record, as that term is used in Minn. R. pt. 4617.0020 (1991).
4. Paragraph 1(d) of the Notice of and Order for Hearing filed in this matter is an accurate statement of the relevant rule.
5. Watonwan County Human Services is a community health service agency. MVAC is a private non-profit human service agency.

2. This case concerns two agencies that have applied to administer the Special Supplemental Food Program for Women, Infants and Children (WIC) in Watonwan County, Minnesota.

During the course of taking testimony on August 27, the parties stipulated further that Watonwan County Human Services meets the eligibility criteria as a local WIC agency and submitted the application to qualify therefor according to Minn. Rules 4617.0010 and 4617.0015. The parties stipulated further that MVAC meets the same eligibility criteria and submitted its application for status as the local WIC agency for Watonwan County in accordance with the same Rules. Therefore, it is stipulated that both Watonwan County Human Services and MVAC qualify under all procedures leading to the designation of a local WIC agency for Watonwan County prior to consideration of their performance records.

3. Minn. Rule 4617.0020, Subpart 4 provides that if two or more applicants to serve the same geographic area otherwise qualify for designation as a local WIC agency, the Commissioner of Health must determine whether one or more of the agencies has a poor performance record. If two or more competing agencies do not have poor performance records within the meaning of Minn. Rule 4617.0020, subps. 8 and 9, the Commissioner is required to approve the application from the agency that is assigned the highest priority under

subpart 6 of the same rule.

4. Minn. Rule 4617.0020, subp. 6 lays out a priority system that must be used by the Commissioner when the considerations involved in subpart 4 of the same rule produce a "tie" because neither competing agency has a "poor

performance record". In that situation, first priority is given to a community health service agency. Fourth priority is given to a private nonprofit human service agency. Pursuant to the Stipulation of Facts, the Commissioner is thus without discretion in assigning first priority in this matter to Watonwan County Human Services and a lower (fourth) priority to MVAC.

5. This hearing process arises because MVAC appealed the Department's determination that Watonwan County Human Services be designated as the local WIC agency for the period October 1, 1993 through September 30, 1995.

6. MVAC has acted as the local WIC agency for Watonwan County since October 1, 1985. The Department has approved MVAC's application to act as local WIC agency for seven other counties in south central Minnesota (Blue Earth, Waseca, LeSueur, Brown, Nicollet, Faribault and Martin) for the period from October 1, 1993 through September 30, 1995. MVAC has been the local WIC agency in three of those counties since 1980, and in the other four since 1985.

7. Watonwan County has a population of approximately 13,000. 4300 persons live in the county seat, St. James. Two other urban centers, Madelia and Butterfield, have a total population of approximately 3,000. The economy of the County is based primarily on agriculture and food processing. The County has four food processing plants, with Tony Downs Foods operating one in each of the three communities. A large percentage of the food processing workers in these plants are of Hispanic background. The total population of the County is between five and ten percent Hispanic, and approximately 46% of the County population that receives WIC Program services is Hispanic. A large number of the Hispanic WIC recipients are in need of bilingual services to assist them in the application and program receipt process because they lack fluency in English. Both MVAC and Watonwan County Human Services have available staff personnel who are able to provide assistance in the Spanish language to WIC applicants and recipients.

8. MVAC has a satisfactory performance record in the carrying out of its function during the eight years it has acted as the local WIC agency in Watonwan County.

9. A transition from MVAC to Watonwan County Human Services as local WIC agency for Watonwan County would not result in a disruption of the delivery of WIC Program services to recipients in Watonwan County.

10. Watonwan County Human Services, an agency that combines human services and health care functions for the County under one administrative umbrella, is in a position to coordinate, with the WIC Program, health care services and all other programs impacting on WIC Program recipients.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction in this matter and authority to take the action proposed pursuant to Minn. Stat. 14.50, Minn. Rule Part 4617.0100 and 7 CFR 246.18.

2. The Notice of Hearing was proper and all relevant substantive and procedural requirements of law and rule have been fulfilled.

3. Any Findings of Fact more properly considered Conclusions are hereby adopted as such.

4. Under Minn. Rule 4617.0100, subp. 3 MVAC has the burden of proving the facts at issue by a preponderance of the evidence because it has appealed the denial of an application to participate within the meaning of the Rule. MVAC has not established that the Department's selection of Watonwan County Human Services as local WIC agency for Watonwan County for the period between October 1, 1993 and September 30, 1995 was improper or is incorrect. MVAC has not proven that Watonwan County has a poor performance record within the meaning of Minn. Rule 4617.0020, subps. 8 and 9.

5. Watonwan County Human Services meets all eligibility requirements for selection as a local WIC agency for Watonwan County. Since it is an eligible agency within the meaning of Minn. Rule 4617.0015, and has priority over the competing agency under Minn. Rule 4617.0020, subp. 6, the Commissioner of Health is without discretion to select MVAC over Watonwan County Human Services as the local WIC agency for the period in question.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Health designate Watonwan County Human Services as the local WIC agency for Watonwan County for the period October 1, 1993 through September 30, 1995, and that the application for the same designation from Minnesota Valley Action Council, Inc. be DENIED.

Dated this day of September, 1993.

RICHARD C. LUIS
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped.

MEMORANDUM

As noted in the body of this Report, the Commissioner of Health has no discretion under the applicable rules but to award local WIC agency designation to an otherwise qualifying community health service agency in situations where it applies initially for that designation. Such agencies have no performance record, and no performance record is not a poor performance record.

Under the applicable rules, performance records are relevant in separating applicants only when they can be used to eliminate applications whose performance is poor. Beyond that, applicants are separated according to their status as an agency and quality of performance is immaterial. Watonwan County Human Services enjoys the first priority status as a community health service agency, outranking MVAC's fourth priority status as a private nonprofit human services agency. Under the applicable statutes and rules, Watonwan County Human Services is therefore awarded the local WIC agency designation.

The Administrative Law Judge believes MVAC understands the process laid out in the rules leading to the recommended results, and that it understands also the record contains no facts establishing that Watonwan County Human Services has the poor performance record needed if local WIC agency designation is to be retained by MVAC. Under the Rule as applied, Watonwan County Human Services is awarded the designation, regardless of the exemplary performance of an incumbent whose only problem is a lower priority. It appears MVAC, in contesting its loss of designation as a local WIC agency, is doing so to maintain its opposition to a rule that fails to give priority to an agency with a satisfactory or better performance record over one with no performance record. This is a rulemaking issue outside the jurisdiction of the contested case process involved here. To receive the relief it seeks, MVAC must work to change the applicable rules so that the result it seeks becomes possible or challenge the rule under the applicable provisions of the Minnesota Administrative Procedure Act, Minn. Stat. 14.44 and 14.45.

Findings are made above regarding the qualifications of each applicant to serve effectively a Spanish-speaking population, and regarding whether a change in local WIC agency designation will disrupt the delivery of services because the Appellant raised the issues at the hearing. MVAC has not met its burden of proof on these issues to establish that Watonwan County Human Services is unable to provide needed bilingual services or cannot provide necessary continuity in the delivery of the services in question. While the personnel delivering the services will be different because the competing agencies are staffed by different people, MVAC has not proven that service quality will suffer.

MVAC also raised the issue that it is able to coordinate with WIC services those other programs that have an impact on WIC Program recipients. Its evidence fails to establish that Watonwan County Human Services cannot provide the required coordination. Moreover, the County made an unchallenged affirmative presentation that it could provide the coordination necessary, as well as bilingual services and delivery of services without disruption. Based on that record, no alternative to upholding the denial of MVAC's application

presents itself.

R.C.L.

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